

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 296 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PATEL JIVANLAL MAGANLAL

Versus

STATE OF GUJARAT

Appearance:

MR HM PARIKH for Petitioner

PUBLIC PROSECUTOR for Respondent No. 1

MR DK DESAI for Respondent No. 2

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 15/10/96

ORAL JUDGEMENT

Patel Jivanlal Maganlal a resident of Bhanpur Taluka Vijapur district Mehsana has preferred the present revision application against the order passed by the learned JMFC. Vijapur on 31.8.96. The revision petitioner has alleged in his petition that he had sought possession of the vehicle which was muddamal property in

the said case. The vehicle in question is a jeep car bearing registration No. GJU-GB-1741 of Mahendra & Mahendra of 1988 model. Admittedly, said vehicle originally belonged to the present petitioner and a transaction took place between the present revision petitioner and respondent no.2 regarding the said vehicle on 20.12.95. It was agreed between the parties that the price of the said vehicle was Rs. 1,18,000/and had executed a document on that day of 20.12.95 on receiving an amount of Rs. 40,000/- in cash and further agreeing to receive the remaining amount of Rs. 78,000/on or before 15.1.96, possession of the said vehicle was delivered to respondent no.2. It is an admitted fact that respondent no.2 has not paid the remaining amount of Rs. 78,000/- on or before 15.1.96 and it seems that thereafter present revision applicant filed a private criminal complaint against the respondent no.2 for the commission of the alleged offences punishable u/ss. 406, 506 and 114 IPC. On receipt of the said complaint, the learned Magistrate was pleased to direct the police to hold an inquiry under section 156(3) of the Cr.P.C. and during the said investigation, the vehicle was seized from the custody of respondent no.2. Thereafter respondent no.2 had to file an application at exh. 3 seeking custody of the said vehicle and by a detailed order dated 31.8.96 learned JMFC, Vijapur was pleased to give interim custody of the said vehicle to the respondent no.2 under section 451 Cr.P.C. Against the said order, original complainant has come in revision before this court.

2. It must be remembered that this is a revision proceedings and not an appeal. Powers of the court in revision proceedings are quite different and distinct from those in an appeal and a revisional court cannot have reappreciation of evidence and the revisional court can interfere with the order of the original court which is challenged in revision only in case it is contrary to the provisions of law or if it is perverse or if it is against the settled principles of law. Therefore, bearing this aspect of the matter before me, I would proceed to consider the claim raised before me by the revision applicant.

3. Admittedly, the transaction between the petitioner and the respondent no.2 has taken place on 20.12.95. It is claimed by the respondent no.2 that said document dated 20.12.95 is a complete document of transferring the title ; in otherwords it is a case of out and out sale. As against this position, the contention of the petitioner before me is that said

document would not amount to out and out sale but it would amount to only an agreement to sell between the parties. This being revisional proceedings, it would not be proper and in the interest of justice as well as in the interest of both the parties to record a conclusive finding by this court as regards the nature of the document at this stage the decision of the rival claim as it requires leading of evidence in respect of their rival contention. If this court happened to express any opinion as regards the nature of the said documents, it is definitely going to cause prejudice to the parties. In my opinion, present application could be decided without expressing any positive finding as regards the nature of document in question.

4. It is an admitted fact that on 20.12.95 the transaction has taken place between the parties and as per the said transaction under an agreement between the parties, the price of the vehicle was put at Rs. 1.18,000/- and out of that amount Rs. 40,000/- was paid to the present applicant and an amount of Rs. 78,000/- was to be received by the petitioner from respondent no.2 on or before 15.1.96. After getting the said amount of Rs. 40,000/- in cash, the possession of the said vehicle was delivered to the respondent no.2. It is the contention of respondent no.2 that after taking the delivery of the said vehicle though it was represented to him that the vehicle was in good condition, his vehicle had broken down on his way and then he had spent an amount of Rs. 45,000/- in getting the said vehicle repaired in order to take the same to his native place. It is further the contention that he had accordingly informed by registered notice through his advocate to the present revision applicant as well as to the vehicle dealer through whom the transaction in question has taken place. It is claimed that he could not make payment of the remaining amount because of the said event of the vehicle going out of order and he was not in a position to make use of the said vehicle. When this is the contention of the respondent and when the proceedings taken by the present revision applicant is in a criminal court, the order passed by the learned Magistrate could not be said to be an illegal order. It is not possible to come to the conclusion that the finding recorded by the learned Magistrate regarding giving of interim custody till the disposal of the criminal case is a perverse finding so as to interfere with the same by exercising revisional jurisdiction. It is also not possible to hold that the order is contrary to the provisions of law or it could be said to be against the settled principles of law. The conclusion to which the learned Magistrate has arrived at

could be possible in the circumstances of the case and when that conclusion is possible, this court would not be justified in interfering with the said conclusion by exercising revisional jurisdiction.

5. No doubt the learned advocate for the revision applicant has cited before me the case of Javerben vs. Jahidmiya Saiyadmiya reported in 1994(2) GLH 407 in order to support his contention that the document in question is not an out and out sale but it was only an agreement to sell. At the cost of repetition it must be said that I am not expressing any opinion as to whether the claim is correct or not but I will only mention that this was a case before the Division Bench in considering the title of the vehicle in a claim arising out of Motor accident. It was not a case considering the interim custody u/s.451 Cr.P.C. He has also cited before me the case reported in 7 GLR 866 in the case of Nandiram vs. State of Gujarat & ors. in support of the contention that he must get custody of the vehicle in question. If the said case is read carefully, then it would be clear that from the said case that it is not possible to know what were the facts before His Lordship N.G.Shelat (as then he was) who has decided the said petition. In my opinion in view of the facts before me, it is not necessary for me at this stage to express any opinion regarding the title of the vehicle in question in view of the admitted position and facts. The order passed by the learned Magistrate could not be said to be illegal or perverse so as to interfere with the same by exercising revisional jurisdiction. I therefore, hold that the present application will have to be rejected. I accordingly reject the same.

6. Learned advocate for the petitioner submitted that the interim relief granted earlier may be continued for two weeks more as he wants to go in the Supreme Court. But as no appeal is tenable against the order in question and no revision is also maintainable, the request is hereby rejected. Notice discharged. Interim relief granted earlier stands vacated.

(S.D.Pandit.J)